

DJW/mat

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JERRY J. STUBBS,

Plaintiff,

v.

Case No. 04-2164-GTV-DJW

McDONALD'S CORPORATION,

Defendant.

ORDER

A telephone hearing was held in this matter on December 28, 2004 at the request of counsel. Plaintiff appeared through counsel Daniel Young and Defendant appeared through counsel Jeremy Glenn. Upon initiation of the telephone call, counsel for Plaintiff orally moved for the deposition of Plaintiff to be taken by defendant in Arizona, where Plaintiff currently resides.

The place of taking a deposition is controlled by Federal Rule of Civil Procedure 26(c)(2). Thus, the examining party may set the place for the deposition of another party wherever he or she wishes subject to the power of the court to grant a protective order under Rule 26(c)(2) designating a different place. A protective order is warranted if the deponent shows good cause, such as annoyance, embarrassment, oppression or undue burden or expense.

The court has a wide discretion in selecting the place of examination and in attaching conditions concerning the payment of expenses. The particular facts of each case will determine the selection of a place for examination.

As a general rule, a plaintiff will be required to make himself or herself available for examination in the district in which suit was brought.¹ Since plaintiff has selected the forum, he or she will not be heard to complain about having to appear there for a deposition. In the absence of good cause demonstrating otherwise, the Court will apply the general rule and deny Plaintiff's oral motion to be deposed in Arizona rather than Kansas.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this _____ day of February, 2005.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties

¹*Steel, Inc. v. Atchison, T. & S. F. Ry. Co.*, 41 F.R.D. 337 (D. Kan. 1967).